

U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



Final Statement

Specific Instance between an individual acting for descendants of Oswald Weiss, and a U.S. company for conduct linked to former Czechoslovakia

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Executive Summary

The U.S. National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) will not offer mediation services between the parties - an individual acting for descendants of Oswald Weiss, and a U.S.-headquartered private equity firm (herein referred to as the “Company”) - regarding conduct linked to events in then Czechoslovakia.

This Specific Instance concerns conduct prior to the adoption of the Guidelines in 1976, which NCPs are not designated to assess, and involves conduct that is beyond the scope of the Guidelines. Therefore, the issues raised would not further the effectiveness of the Guidelines. The U.S. NCP considers this case closed with this Final Statement.

Substance of the Specific Instance

On May 24, 2017, an individual acting for descendants of Oswald Weiss, (herein referred to as the “submitter”) filed a Specific Instance with the U.S. NCP alleging that a U.S. company, through its acquisition of a German company, practiced conduct inconsistent with the Guidelines’ Chapter II, General Principles, and Chapter IV, Human Rights, in its acquisition of a factory seized by Germany during World War II. The submitter claims to represent himself and two families, as descendants of the original owner of the factory.

The issues raised in the Specific Instance cover a period from 1939 to the submission date. The submission alleges that the original owner acquired the factory in 1904 and claims that a German company illegally stole the factory from the owner through the aid of the invading German army during World War II. When World War II ended, the submitter claims that the government of Czechoslovakia originally nationalized the factory and then later privatized it, selling it to the German company. In September 2015, the Company purchased 100 percent of the latter German company, including ownership of the factory.

The submitter alleged that in the acquisition, the Company failed to exert its due diligence responsibilities under the Guidelines to identify, prevent, and mitigate actual and potential adverse impacts, such as human rights abuses that occurred during World War II, including understanding the factory’s historical context prior to purchase. To address the allegations, the submitter requests that the U.S. NCP offer mediation between himself and the Company.

Decision

The purpose of the Guidelines is to promote responsible business conduct by multinational enterprises. Adhering governments to the Guidelines, which were established in 1976, have committed to encouraging their multinational enterprises to promote and implement the Guidelines in their global operations and appointing an NCP to assist parties in seeking a mutually satisfactory resolution to issues that may arise under the Guidelines.

After thorough review of the information provided, the U.S. NCP has decided to turn down the case and not to offer its mediation services. The Guidelines were adopted in their original form in 1976 as one part of the OECD Declaration on International Investment and

Multinational Enterprises. Actions taken prior to 1976 do not fall under the purview of the Guidelines which cannot be implemented retroactively. This applies to the present Specific Instance, through carrying out due diligence for the acquisition in 2015 related to conduct from 1939. As a result, the U.S. NCP did not inform the companies mentioned in this Specific Instance and therefore did not name the company in this final statement.

Per the official guidance of the Guidelines, the U.S. NCP coordinated with the NCPs from the Czech Republic and Germany on this Specific Instance, who both supported this decision. The U.S. NCP brings the Specific Instance to a close with this Final Statement, which is published online at www.state.gov/USNCP.



Melike Ann Yetken

[U.S. National Contact Point](#) for the [OECD Guidelines](#)

U.S. Department of State

Annex: Details of U.S. NCP Specific Instance Process and Outcome of Initial Assessment

I. Context and Background on the U.S. NCP

[The OECD Guidelines for Multinational Enterprises](#) (“Guidelines”) are voluntary recommendations for companies regarding responsible business conduct in a global context. The Guidelines are addressed to multinational enterprises (“MNEs”) operating in or from the territories of governments adhering to the OECD’s Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to encouraging their MNEs to promote and implement the Guidelines in their global operations and appointing a national contact point (NCP) to assist parties in seeking a mutually satisfactory resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues relating to implementation of the Guidelines, raised in the form of a Specific Instance, with regards to the business conduct of an MNE operating or headquartered in the United States. The Office of the U.S. NCP handles such instances in accordance with its [procedures](#), which are based on the Guidelines.

The U.S. NCP’s primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution and its role is to offer mediation to facilitate the resolution of the matter and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. The U.S. NCP does not make a determination as to whether a party is acting consistently with the Guidelines, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

The offer of mediation is in no way an acknowledgement of or determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to assist the parties in voluntarily, confidentially, and in good faith, reaching a cooperative resolution of their concerns. For the Company’s part, a decision to participate in this process would not have implied any prima facie admission of conduct inconsistent with the Guidelines.

In mediation, the parties are responsible for arriving at their own solution and the process is designed to create an environment for cooperative problem solving between the parties. The parties are in control of the outcome of an agreement. Participation is voluntary and no parties would be compelled to violate the law or waive their rights under the law during the NCP process. If the parties can reach an agreement through mediation or other means, the U.S. NCP would consider requests by the parties to follow up on implementation.

II. Conducting the Initial Assessment

Per the Guidelines procedures, upon receiving a Specific Instance, the U.S. NCP conducts an Initial Assessment. The Initial Assessment does not determine whether the Company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised merit further examination. Per the Guidelines procedures, the Initial Assessment is conducted based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise’s activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

The U.S. NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines raised in Specific Instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The U.S. NCP works to facilitate dispute resolution in a confidential, efficient, and timely manner with an aim toward a forward-looking, good-faith resolution, and in accordance with applicable law.

III. Outcome of the Initial Assessment

Per the Guidelines, the U.S. NCP took the following points into account when considering whether this Specific Instance merited further consideration.

a. Identity of the party and its interest in the matter

The U.S. NCP is satisfied that the submitter is able to provide information about the Specific Instance and has an interest in the issues raised. The submitter reports that he is a descendent of the original owner of the factory involved in the alleged conduct by the Company and represents himself and the interest of two families, who are also descendants.

The Company is a U.S.-headquartered global private equity firm that works with companies to improve their financial resources.

b. Whether the issue is material and substantiated

The submitter has provided information in writing and in the forms of research, historical documents, timelines, and articles, alleging that the Company failed to exert its due diligence responsibilities under the Guidelines to identify, prevent, and mitigate actual and potential adverse impacts, such as human rights abuses that occurred during World War II, including understanding the factory’s historical context prior to purchase. The U.S. NCP, per its established procedures, makes no determination whether a violation of the Guidelines has taken place.

c. Link between Respondent’s activities and issues raised

The submitter alleges that the Company’s failure to take appropriate due diligence dating back to 1939 contributed to the continued human rights violation of the descendants of the original factory owner.

d. Relevance of applicable law and procedures, including court rulings

The U.S. NCP is not aware of any applicable law and procedures that impact this Specific Instance.

- e. How similar issues have been, or are being treated in other domestic or international proceedings*

Retribution and restitution of ownership after World War II were highly regulated and relevant norms provided ways on how to restore an ownership over property lost during these periods.

- f. Whether the consideration of the Specific Instance would contribute to the purposes and effectiveness of the Guidelines.*

Consistent with the criteria in the U.S. NCP procedures for Specific Instances (as established in the Guidelines themselves), the U.S. NCP determined in the course of its Initial Assessment that the matters raised did not merit further consideration and are not relevant to the implementation of the Guidelines.

IV. Role of the Interagency Working Group and Relevant NCPs

Per its standard procedures, the U.S. NCP consulted and received input from its U.S. government experts throughout the process. The U.S. NCP consulted with the Czech and German NCPs throughout the process and they both supported this Final Statement. The U.S. NCP also coordinated with the Australian NCP.